



MULTISTATE TAX COMMISSION

Enforcing Tax Collection Duties on Foreign Sellers

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In the wake of *Wayfair*, states generally have the legal authority to impose tax collection and remittance responsibilities on foreign sellers.

But this is not the end of the story:

If the tax due is not paid, states face the challenge of collecting foreign judgments from intransigent sellers.



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A state that seeks to enforce a tax judgment in another state faces substantial *practical* hurdles.

States that seek to enforce tax judgments in foreign jurisdictions face legal barriers.



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“The Revenue Rule”

“No country ever takes notice of the revenue laws of another.”

Holmes v. Johnson, 98 Eng. Rep. 1120, 1121
(1775)



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The revenue rule remains good law

1. The U.S. Supreme Court continues to acknowledge the revenue rule, most recently in *Pasquantino v. United States*, 544 U.S. 349 2005.
2. Uniform Foreign Money-Judgments Act (1963): a “foreign judgment” is enforceable “in the same manner as the judgment of a sister state which is entitled to full faith and credit.” The Act’s definition of foreign judgment excludes “a judgment for taxes.” Adopted by 31 states.
3. Uniform Foreign-Country Money Judgments Act (2005), which has similar language, has been adopted by 23 states.



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In *Her Majesty the Queen v. Gilbertson*, 597 F.2d 1161 (9th Cir. 1979), the Court of Appeals declined to enforce a Canadian tax judgment against U.S. citizens.

“The revenue rule has been with us for centuries and as such has become firmly embedded in the law. . . . When and if the rule is changed, it is a more proper function of the policy-making branches of our government to make such a change.”

In its opinion, the Court referenced a decision by the Supreme Court of Canada, which had quoted an opinion by U.S. Judge Learned Hand.



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U.S. tax treaties are of no help

- Generally U.S. tax treaties do not address enforcement of foreign tax judgments.
- Subsequent to the *Gilbertson* decision, the U.S. and Canada entered into a tax convention to assist in the enforcement of each other's tax judgments—the agreement does not apply to state taxes.
- Tax treaties primarily concern income and capital taxes.



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Many countries around the world have adopted the revenue rule

China

- 266 of the Civil Procedure Law of the PRC: Subject to various limitations, Chinese courts may enforcement a foreign judgment “according to the international treaties concluded or acceded to the People’s Republic of China or based on the principle of reciprocity.”
- No relevant U.S.-China tax treaty
- 2017—a Chinese court recognizes a U.S. court judgment for the first time. It is not a tax judgment.



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- The revenue rule “has entered United States common law, international law and the national law of other common law jurisdictions.” (2d Circuit U.S. Court of Appeals, 2001)
- Brussels Regime (EU)—excludes revenue judgments
- Foreign tax claims generally not enforced by courts in civil law countries (Intl Law Association report, 1988)



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What is to be done?

Don't overstate the problem.

- Total sales from foreign sellers are relatively small (although growing).
- Business-to-business sales will continue to be less of an issue.
- For various reasons, many foreign sellers will seek to comply with the law.
- Sales by some foreign sellers will fall below state small seller thresholds



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Tools to achieve compliance

1. Many foreign sellers sell to U.S. customers through marketplaces. States can impose tax collection responsibilities on marketplaces.
2. Obtain purchase data from the U.S. Customs Bureau and (if the state imposes an individual income tax) deduct unpaid use taxes from state income tax refunds.
3. Avoid application of the revenue rule by pursuing non-tax civil actions against sellers that collect but do not remit use taxes.
4. Impose Colorado-style reporting requirements on sellers that do not collect and remit tax. Impose penalties on those sellers that do not comply.
5. Levy credit card and similar payment receipts in the possession of U.S. entities that provide payment processing services to foreign sellers.



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Word of Caution

When devising tools to address non-compliance by foreign sellers, states must be careful not to discriminate against foreign commerce.

If a state imposes requirements that are different from the requirements that are imposed on domestic sellers, it must be prepared to identify a compelling local interest and to show that there is no less discriminatory way to achieve that result.



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For more details:

A substantive memorandum addressing the revenue rule is posted on the MTC's website